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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 6

DE LAVAL STEAM TURBINE COMPANY, PETITIONER,

vs.

THE UNITED STATES, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BRIEF IN SUPPORT OF PETITION.

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(35,440)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 685

DE LAVAL STEAM TURBINE COMPANY, PETITIONER,

vs.

THE UNITED STATES, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

The opinions of the Court of Claims (R. 89, 98) have not yet been officially reported.

Jurisdiction.

The judgment of the Court of Claims was entered April 30, 1930 (R. 79). A motion for new trial was

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duly filed and entertained (R. 79). The motion for new trial was overruled November 3, 1930 (R. 80). The petition for writ of certiorari was filed January 29, 1931 (R. 105). Jurisdiction to issue writ of certiorari is conferred upon this Court by Sec. 3 (b) of the Act of February 13, 1925 (Chap. 229, 43 Stat. 936), Judicial Code, Sec. 240.

The Statute.

The Statute is the Act of June 15, 1917, known as the "Emergency Shipping Fund Act" (40 Stat. 182). The pertinent portion thereof is set forth as Appendix A.

STATEMENT.

As shown by the petition for certiorari, this case involves important questions concerning the responsibility of the Government to make compensation for valuable rights under private contracts appropriated for its benefit during the World War. The case is novel in that in all prior cases in this Court and the Court below in which compensation was sought for contract rights requisitioned, suit was brought by the purchaser and not by the seller, manufacturer or builder, as in this case.

Petitioner is, and at all times hereinafter mentioned was, a New Jersey corporation engaged in the business, among other things, of manufacturing marine steam turbines and reduction gears and spare parts therefor (F. 1, R. 81).

Prior to January 12, 1918, petitioner had entered into thirteen written contracts with various private

firms and corporations for the manufacture by it of certain De Laval steam turbine propulsion units for ships (F. 2, R. 81). All of these contracts were requisitioned by the Government, but there is no controversy except as to three of them, hereinafter referred to as private contracts and briefly described as follows:

(*a*) Supple & Ballin contract made May 18, 1917, for construction by petitioner of four marine turbine sets including furnishing materials therefor at contract price of $150,000 (R. 27);

(*b*) Standifer contract made December 31, 1917, for construction by petitioner of ten marine turbine sets including furnishing materials therefor at contract price of $735,000 (R. 39);

(*c*) Turbine Equipment Co.-Luckenbach contract made March 15, 1917, for construction by petitioner of four marine turbine sets including furnishing materials therefor at contract price of $216,000 (R. 52), as supplemented by orders of Turbine Equipment Company dated respectively April 16, 1917 and May 5, 1917, and accepted by petitioner, for certain spare parts for said four turbine sets at agreed price of $12,530 (R. 61).

Before the requisitions the respective purchasers under these contracts made payments to petitioner on account of the contracts as follows: Supple & Ballin $15,000 (F. 2, R. 81; F. 15, R. 88); Turbine Equipment Co. $68,559 (F. 2, R. 81; F. 15, R. 88); G. M. Standifer Construction Corporation $73,500 (F. 2, R. 81; F. 15, R. 88).

Early in 1918, petitioner was performing these contracts when respondent, acting through the United States Shipping Board Emergency Fleet Corporation, pursuant to the Act of Congress approved June 15, 1917, known as the "Emergency Shipping Fund Act" (40 Stat. 182), and the executive order of the President of the United States, dated July 11, 1917, requisitioned the contracts and the turbines and material to be delivered thereunder, and required and ordered petitioner to complete the same for the benefit of the United States (F. 2, R. 81; Fs. 3, 4 and 5, R. 82; R. 36, 50, 63).

About April 20, 1918, respondent, acting by the United States Shipping Board Emergency Fleet Corporation, agreed to purchase from petitioner and petitioner agreed to sell to it certain spare parts for the turbine equipments being constructed by petitioner under the three private contracts before mentioned. This contract was subsequently modified by eliminating therefrom certain spare parts, and the contract or purchase order as amended was referred to as P. D. 1779 (F. 5, R. 83).

After the requisitions, petitioner continued the performance of its obligations under said private contracts as directed by respondent for its benefit for about one year when respondent, on account of the general curtailment of the Fleet Corporation's program of ship construction subsequent to the signing of the Armistice (R. 83), ordered petitioner to stop all work under said contracts and purchase order No. P. D. 1779, except on one of the ten sets of turbine equipment specified in the Standifer contract and one set of spare parts therefor (F. 8, R. 84; F. 14, R. 87).

Thereafter petitioner completed and delivered to respondent said one set of turbine equipment and fourteen of the pumps called for by that contract (F. 10, R. 85).

On receipt of respondent's orders to stop work, petitioner complied (F. 8, R. 84) and stored the materials it had acquired and assembled for performance of the contracts in its machine shop and casting yard (F. 7, R. 84), until January 14, 1920, when respondent, by agreement with petitioner, released said materials from the effect of the requisition orders, and petitioner took them over at an agreed salvage value of $20,149.88 for which respondent took credit (Fs. 7 and 8, R. 84, 85).

Petitioner's actual costs and expenditures incurred in and about the performance of the Supple & Ballin contract to the time respondent directed it to stop work thereon were $45,918.73. It could have completed performance at a further cost of $66,122.45 and would have made profits of $37,959.16 by fully performing (F. 9, R. 85).

Petitioner's actual costs and expenditures incurred in and about performance of the Standifer contract to the times respondent directed it to stop work thereon were $169,772.74 with respect to the nine turbines on which work was stopped. Petitioner could have completed performance of said contract at a total cost (including said $169,772.74) of $416,234.50 and would have made profits thereby of $318,765.50 (F. 10, R. 85).

Petitioner's actual costs and expenditures incurred in and about performance of the Turbine Equipment-

Luckenbach contract to the time respondent directed it to stop work thereon were $73,008.16. It could have completed performance at a further cost of $141,582.69 and would have made profits of $13,939.15 by fully performing (F. 11, R. 86).

Petitioner's actual costs and expenditures incurred in and about performance of purchase order P. D. 1779 to the times respondent directed it to stop work thereon were $9,029, exclusive of the cost of a set of spare parts delivered to and paid for by the Fleet Corporation. Petitioner could have completed performance of that part of P. D. 1779 upon which work was ordered stopped at a further cost of $16,586.22 and would have made profits of $33,193.78 by fully performing that part of said contract (F. 12, R. 86).

At all times petitioner was ready, willing and able to complete the contracts (F. 6, R. 83).

Thereafter, petitioner presented its claim for just compensation to the Emergency Fleet Corporation and on May 19, 1920, that corporation awarded petitioner $88,723.63 as just compensation. Petitioner refused to accept such award and, pursuant to said Act of June 15, 1917, elected to take 75% of the award and to sue the respondent for such further sum as added to 75% would make up just compensation (F. 5, R. 75; F. 5, R. 83).

Thereafter, petitioner instituted this suit in the Court of Claims to recover $583,396.65 plus interest as just compensation for (1) the three private contracts which were requisitioned as before stated, (2) cancellation of respondent's purchase order No. P. D. 1779 (dated April 30, 1918) for spare parts for the

turbine equipment covered by the last mentioned three contracts, and (3) for extra costs and expenses incurred by petitioner in storing and handling materials after suspension of the aforementioned contracts and for extra work caused by such suspension.

On April 30, 1930, the Court of Claims filed special findings of fact (R. 81), conclusion of law and opinion (R. 89), holding that petitioner was entitled to recover $84,074.34 with interest from August 17, 1920 until paid, and also $8,500 with interest from March 17, 1919 until paid. The first of the items allowed by the Court—$84,074.34—is the unpaid balance of that which the Court found petitioner's actual costs to be after deducting therefrom payments made by the original purchasers and respondent respectively, plus interest on said unpaid balances to August 17, 1920; and the other item—$8,500—is denominated by the Court as "cancellation allowance". *No allowance whatever was made for profits petitioner would have made by performance of the contracts.*' (R. 93, 94, 95.)

Petitioner moved for a new trial and on November 3, 1930 the Court denied the motion and filed a supplemental opinion (R. 98) adhering to its original opinion, but slightly modifying two of its special findings.

In its opinions, the Court holds with respect to petitioner's contentions that its contract rights and materials were requisitioned that "there was in fact no property taken; instead the contracts were cancelled" (R. 93); that "the contracts of the purchasers were requisitioned, and the defendant put itself in the place of the parties who made the contracts with the plaintiff" (R. 99); that "plaintiff's right to recover in the

case must be determined under the Act of June 15, 1917, providing that the Government had the right to cancel all or any part of such contracts as are involved herein, and its right to recover must be limited by the rule laid down in *Russell Motor Car Co. v. U. S.*, 261 U. S. 514" (R. 99); and that petitioner "cannot be allowed for anticipated profits on any of the contracts notwithstanding the fact that if it had been permitted to complete them substantial profits would have been realized" (R. 94).

Ultimate Questions.

This case arises out of the exertion of the power of requisition conferred on the President by the Act of June 15, 1917, known as the "Emergency Shipping Fund Act" (40 Stat. 182). The ultimate questions involved are whether the requisitions under said Act of the three private contracts before referred to took from petitioner its property; and if so, upon what basis is just compensation to be ascertained. In *Brooks-Scanlon Corporation v. United States* (265 U. S. 106) the taking of the rights of the *purchaser* was involved; whereas in this case the taking of the contract rights of the *manufacturer* is in question.

ARGUMENT.

I. The Court of Claims Found That the Three Private Contracts Were Requisitioned, But Erred in Holding That Such Requisitions Took No Property From Petitioner.

The findings show that the three private contracts, as well as the materials acquired by petitioner for

performance of those contracts, were requisitioned (F. 2, R. 81; Fs. 3, 4, 5, R. 82; Fs. 7, 8, R. 84; Fs. 13, 14, R. 87; also Exhibits R. 36, 50, 63), but the Court, after conceding that petitioner is entitled to just compensation for the acts of the Government (R. 93), in its opinion says:

> "There was in fact no property taken; instead the contracts were cancelled." (R. 93.)

And in its supplemental opinion says:

> "The contracts of the purchaser were requisitioned and the defendant put itself in the place of the parties who made the contracts with the plaintiff." (R. 99.)

The assertion that there was in fact no property taken is erroneous and contrary to the evidence and the findings of fact and the conclusions to be drawn from those findings.

The Government having by its requisitions expropriated the purchasers' contract rights and obligations under their contracts with petitioner (*Brooks-Scanlon v. U. S.*, 265 U. S. 106, at p. 120), it necessarily follows that by the same requisitions petitioner's rights founded on the purchasers' obligations under the contracts also were taken. The rights and obligations of the respective parties to the contracts were reciprocal and dependent, and manifestly the obligations of the purchasers could not be taken or assumed without at the same time taking from the petitioner its correlative

rights. Before the requisitions, the purchasers had the right to look to the petitioner to build and deliver the turbine equipment and were obligated to pay the petitioner the unpaid balance of the purchase price; and correlatively, petitioner had the right to build the turbine equipment for the purchasers with whom it had contracted, in the manner, at the times and at the prices fixed by the contracts, and to demand and receive from the purchasers the unpaid balance of the purchase price as provided in the contracts, or in the event of failure on the part of purchasers to pay the same, to recover from them compensation by way of damages for breach of the contracts, which damages would include the profits petitioner would have realized by full performance. By the requisitions, the contract rights and obligations of the purchasers passed to the Government (Brooks-Scanlon Co. *v.* U. S., *supra*), and the purchasers were relieved of all their obligations under the contracts and petitioner was deprived of its corresponding rights founded on the purchasers' obligations. This situation was the direct result of the requisitions and petitioner had no choice or say in the matter. *Liggett & Myers vs. U. S.* 274 U. S. 215, 220. The petitioner's contract rights went with the purchasers' rights and obligations, just as in *Monongahela Navigation Co. v. U. S.*, 148 U. S. 312, the franchise to take tolls went with the tangible property appropriated by the Government. There the Government contended that it did not take the franchise; that it did not need any authority from the State for the exaction of tolls if it desired to exact

them, and that it only appropriated the tangible property, and this Court answering these contentions said:

> "But this franchise goes with the property; and the Navigation Company, which owned it, is deprived of it. The government takes it away from the company, whatever use it may make of it; and the question of just compensation is not determined by the value to the government which takes, but the value to the individual from whom the property is taken; and when by the taking of the tangible property the owner is actually deprived of the franchise to collect tolls, just compensation requires payment, not merely of the value of the tangible property itself, but also of that of the franchise of which he is deprived.'" (P. 345.)

In the recent decision on this question *International Paper Co. vs. United States*, #37 O. T., 1930 (decided January 19th, 1931, and not yet reported), the "total quantity and output of the electrical power which was capable of being produced and/or delivered through the use of all waters capable of being diverted through your (Niagara Falls Power Company's) intake canal" was requisitioned by the United States for war purposes. From this canal the Paper Company was entitled by lease and conveyance to draw water. The Government contended and the Court of Claims held that no property was taken from the Paper Company. This Court reversed the decision of the Court of Claims and held that in taking the water power of the River, the Government also took the Paper Company's rights, under its lease, in said water power, and must

pay for them—just as in the case at bar, by the taking of the purchasers' rights under the contracts in suit, the Government also took the correlative rights of the petitioner against said purchasers, and must make full compensation therefor. Mr. Justice Holmes, speaking for this Court, said:

> "There is no room for quibbling distinctions between the taking of power and the taking of water rights. The petitioner's right was to the use of the water; and when all the water that it used was withdrawn from the petitioner's mill and turned elsewhere by Government requisition for the production of power it is hard to see what more the Government could do to take the use. It is true that the petitioner did not come within the scope of the Government's written promise to pay. But the Government purported to be using its power of eminent domain to acquire rights that did not belong to it and for which it was bound by the Constitution to pay. It promised to pay for all the power that the canal could generate. If it failed to realize that the petitioner had a right to a part of the power, its clear general purpose and undertaking was to pay for the rights that it took when it took the power. *Phelps v. United States*, 274 U. S. 341, 343. *Campbell v. United States*, 266 U. S. 368, 370, 371. *United States v. Great Falls Manufacturing Co.*, 112 U. S. 645, 656."

By its requisitions, therefore, the Government took from petitioner:

(*a*) Physical property consisting of petitioner's materials acquired for use in manufacturing the tur-

bines called for by the contracts (F. 4, R. 82; F. 5, R. 83; F. 7, R. 84; F. 8, R. 84; R. 90; also Exhibits R. 36, 50, 63).

(*b*) Intangible property consisting of petitioner's rights under the three private contracts. These rights were definite, certain and non-cancellable, no right to change the terms of the contract or to cancel them being reserved to any of the parties to the contracts (Supple & Ballin contract, R. 27; Standifer contract, R. 39; Turbine Equipment-Luckenbach contract, R. 52, 61); and such rights had a real and substantial value based upon the assured profits petitioner would have realized by performance. These profits as found by the Court of Claims aggregate $370,663.81.

If the Government had not requisitioned the contracts of the purchasers, as found by the Court below, and such purchasers had stopped work thereunder and refused further performance, petitioner would have had a good cause of action for breach of contract under a long line of decisions in this Court from *United States v. Speed* (8 Wall. 77, 84) to *United States v. Purcell Envelope Co.* (249 U. S. 313, 320), in which the measure of damages laid down "is the difference between the contract price and the cost of performance"—thereby including in the amount recoverable the profits which would have been made. For the acts of the Government in expropriating the purchasers' contract rights and obligations, directing performance for its benefit and suspending the work after a year of such performance,—the compensation

of petitioner should be no less than it would have been in an action against the purchasers.

II. The Court of Claims Erred in Holding, as to All Four Contracts, That Petitioner's Right of Recovery Must Be Based on Cancellation.

The Court of Claims held that petitioner's right to recover must be based on cancellation. It is conceded that this is correct as to the Government contract (P. D. 1779) but not as to the three private contracts. In so holding with respect to the three private contracts, the Court completely ignores the fact that these contracts were first requisitioned and that cancellation of them did not take place until about a year later, during which year petitioner was required by respondent to continue performance of its obligations under the contracts for the benefit of the respondent. Obviously petitioner's right to compensation accrued by reason of the requisition. *Russian Volunteer Fleet v. U. S.*, #39 October Term, 1930 (decided February 25, 1930).

This Court held in *Brooks-Scanlon Corporation v. U. S.*, 265 U. S. 106, that the contract there involved was not terminated by the requisition (similar to the requisitions in the instant case) but that it was kept alive for the benefit of the United States. In that case the Government contended that no property was taken from the purchaser and the Court of Claims agreed. This Court, however, reversed the Court of Claims, holding that the purchaser's contract rights were expropriated, for which it was entitled to just compensation, and, therefore, that it was not necessary to con-

sider what would be just compensation for a mere cancellation of a contract, saying in the latter connection (at p. 122),

> "As we hold that claimant's contract rights were expropriated, *it is not necessary to consider what would be just compensation in case of mere cancellation of the contract.*" (Italics ours.)

> "The obligation of a contract is not impaired when it is appropriated to a public use and compensation made therefor. Such an exertion of power neither challenges its validity nor impairs its obligation. Both are recognized, for it is appropriated as an existing enforceable contract. It is a taking, not an impairment of its obligation. If compensation be made, no constitutional right is violated. All of this has been so long settled as to need only the citation of some of the many cases. *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420; *The West River Bridge Co.* v. *Dix*, 6 How. 507; *N. O. Gas Co.* v. *La. Light Co.*, 115 U. S. 650; *Long Island Water Supply Co. v. Brooklyn*, 166 U. S. 685; *Offield* v. *Railroad Co.*, 203 U. S. 372."
>
> *Cincinnati* v. *Louis. & Nash. R. R. Co.*, (223 U. S., 390, 400).

III. The Decision of the Court of Claims Is Based Upon an Erroneous Interpretation and Application of the Russell Motor Car Co. and Brooks-Scanlon Cases, Supra.

Proceeding on its theory that no property was taken from petitioner and that recovery herein must be based

on cancellation, which recovery must be limited by the rule laid down in the Russell Motor Car Co. case, the Court decides that the compensation to which petitioner is entitled is limited to the balance of petitioner's actual costs after crediting the amounts received by it on account of the contracts, plus interest for delay in payment, and a cancellation allowance of $8,500, and interest thereon, without any allowance whatever for or on account of the profits petitioner would have realized on the contracts but for the acts of the Government. In this the Court utterly disregards the lack of analogy between the facts in the Russell Motor Car Co. case and those in this case with respect to the three private contracts. The Russell case deals with cancellation of a Government contract made after the enactment of the Act, whereas the three contracts involved in this case are private contracts, two of them made before and the other after the enactment of the Act. The Court further disregards the fact that the decision of this Court in the Russell case refusing to allow anticipated profits was predicated upon the conclusion that the contract was entered into with the prospect of its cancellation in view, since the statute was binding and must be read into the contract, and the possible loss of profits, therefore, must be regarded as within the contemplation of the parties. No such elements were present with respect to the three private contracts involved in this case. No extensive argument is necessary to point out that the Russell Motor Car Co. case is, therefore, entirely inapposite to the situation here presented.

The Court of Claims, in reaching the conclusion just discussed, interprets the decision of this Court in the Brooks-Scanlon case as holding that prospective profits constitute no part of just compensation in "such cases." (R. 100.) That this construction is wrong is apparent from the following quotation from the opinion of this Court in that case, at p. 123:

> "As we hold that claimant's contract rights were expropriated, it is not necessary to consider what would be just compensation in case of mere cancellation of the contract."

The error of the Court of Claims is also shown by the following language of this Court in *Ingram-Day Co. v. McLouth*, 275 U. S. 471, at p. 473:

> "The statute authorized the cancellation of the government's own contracts, made after its enactment, and just compensation for such cancellation does not include anticipated profits, ordinarily recoverable in an action of assumpsit. *Duesenberg Motors Corp. v. United States*, 260 U. S. 115; *Russell Motor Car Co. v. United States*, 261 U. S. 514. *It authorized also the expropriation or requisition of private contracts, and in computing the just compensation for these the value of the anticipated performance of the contract may be considered. Brooks-Scanlon Corp. v. United States*, 265 U. S. 106, 125." (Italics ours.)

The Court of Claims not only construes the Act as authorizing the Government to cancel private contracts whether made before or after the enactment of the Act, but holds that compensation to be paid for any such cancellation must be limited by the rule pre-

scribed by this Court in the Russell Motor Car Co. case, *supra*, that prospective profits are not to be included. That rule, as we have just poined out, is expressly limited in its scope and application to Government contracts made after the enactment of the Act.

Any such limitation or restriction upon the obligation to pay just compensation for the taking or cancellation of private contracts results in a deprivation of the rights guaranteed by the Fifth Amendment to the Constitution.

> "Acts of Congress are to be construed and applied in harmony with and not to thwart the purpose of the Constitution."
> *Phelps v. U. S.*, 274 U. S. 341, 344.

Even as to the Government contract (P. D. 1779) petitioner was entitled to receive the proportion of realizable profits which its actual expenditures bore to the total cost to perform. The Court (F. 12, R. 86) found the actual expenditures on this contract to the date of suspension were $9,029, the total cost to fully perform $25,615.22 and that petitioner would have made profits of $33,193.78 by fully performing. The ratio of its earned profit on the part completed therefore, was about 35%. The Court awarded no profits whatsoever.

IV. The Decision of the Court of Claims Is Not in Accord With or Does Not Give Proper Effect to Applicable Decisions of This Court.

The Court of Claims decided the question involved in this case in a way not in accord with or which does

not give proper effect to the following applicable decisions of this Court:

Monongahela Navigation Co. v. United States, supra;
Brooks-Scanlon Corporation v. United States, supra;
A. W. Duckett & Co. v. United States, 266 U. S. 149;
Campbell v. United States, 266 U. S. 368;
Phelps v. United States, 274 U. S. 341;
Ingram-Day Co. v. McLouth, 275 U. S. 471;
International Paper Co. v. United States, #37 O. T., 1930 (decided January 19, 1931, and not yet reported).

The Duckett and Phelps Cases, *supra,* involved claims for compensation for leasehold interests in certain piers in New York City appropriated by the Government at the time the piers themselves were requisitioned for war purposes. The contracts of lease were held to be part of the *res* taken, and the compensation awarded included the value of the use at the time of the taking, which value was far in excess of the rental stipulated by the leases.

In all of the above cases, this Court was especially solicitous that the intent of the Fifth Amendment to the Constitution should not be thwarted by failure to require the Government to make whole those whose property had been taken. There is no "blinking the consequences." If property has been taken just compensation to the full must be made.

"The compensation to which the owner is entitled is the full and perfect equivalent of the property taken. *Monongahela Navigation Company v. United States,* 148 U. S. 312, 327. It rests on equitable principles and it means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken. *United States v. Rogers et al.* (C. C. A., Eighth Circuit), 257 Fed. 397, 400. He is entitled to the damages inflicted by the taking. *Northern Pacific Railway Company v. North American Telegraph Company* (C. C. A., Eighth Circuit), 230 Fed. 347, 352, and cases there cited."

Seaboard Air Line Ry. Co. v. U. S., 261 U. S. 299, at p. 304.

In *Monongahela Navigation Co. v. United States, supra,* this Court said:

"The value of property is determined by its productiveness—the profits which its use brings to the owner. * * * The value is not determined by the mere cost of construction but more by what the completed structure brings in the way of earnings to its owner * * *" (328). "Before this property can be taken away from its owners the whole value must be paid; and that value depends largely upon the productiveness of the property, the franchise to take tolls" (329).

Conclusion.

It is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory

power and that to such end a writ of certiorari should be granted.

Respectfully submitted,

GEORGE C. HOLTON,
JOHN S. FLANNERY,
Counsel for Petitioner.

FRANK F. NESBIT,
GEORGE F. LOSCHE,
of Counsel.

APPENDIX A.

ACT JUNE 15, 1917 (40 STAT. 182).

EMERGENCY SHIPPING FUND.

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(*a*) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quantity usually produced or capable of being produced by such person.

(*b*) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(*c*) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(*d*) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(*e*) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities or qualities of the ships or material so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the

manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: *Provided,* That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States shall be managed, operated, and disposed of as the President may direct.

The word "person," as used herein, shall include any individual, trustee, firm, association, company, corporation, or contractor.

The word "ship" shall include any boat, vessel, or submarine and the parts thereof.

The word "material" shall include stores, supplies, and equipment for ships, and everything required for or in connection with the production thereof.

The word "plant" shall include any factory, workshop, warehouse, engine works; buildings used for manufacture, assembling, construction or any process; any shipyard or dockyard and discharging terminal or other facilities connected therewith.

The words "United States" shall include all lands and waters subject to the jurisdiction of the United States of America.